

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

<b>TIMOTHY ALLEN,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No.</b>
	)	
<b>JAMES PORTER and FAST CARGO, INC.,</b>	)	<b>Removed from Jackson County</b>
	)	<b>Case No. 2116-CV20782</b>
	)	
<b>Defendants.</b>	)	<b>Jury Trial Demanded</b>

**NOTICE OF REMOVAL**

COMES NOW Defendant Fast Cargo, Inc. (hereinafter “Defendant”), by and through its counsel, and pursuant to 28 U.S.C. §§ 1441 and 1446, and 28 U.S.C. § 1332, hereby removes this action from the Circuit Court of Jackson County, Missouri, based on the following grounds:

1. This Defendant has been named in a civil action brought in the Circuit Court of Jackson County, Missouri, assigned Case No. 2116-CV20782. A copy of the Petition for Damages was served on this Defendant via summons for personal service outside the State of Missouri on November 8, 2021, and is attached as **Exhibit 1**. The claims alleged against this Defendant are for vicarious liability for the alleged negligent acts and omissions of Defendant James Porter.

2. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), in that it was filed within 30 days of service on this Defendant.

3. Removal is proper under 28 U.S.C. §§ 1332, 1441 and 1446 because there is complete diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs, as explained below. *See* 28 U.S.C. § 1446(a) (defendants need provide only “a short and plain statement of the grounds for removal”); *Dart*

*Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547, 553-54 (2014) (Section 1446 “[t]racks the general pleading requirements stated in [Fed. R. Civ. P.] 8(a),” and submissions of proof are only necessary if the plaintiff or court contests the allegations in the notice of removal).

a. **Diversity of Citizenship.** The Plaintiff is alleged to be a resident and citizen of Odessa, Missouri. This Defendant is an Indiana corporation with its principal place of business in Indianapolis, Indiana, and therefore is a citizen of Indiana. Defendant James Porter is alleged to be a resident and citizen of California.

b. **Amount in Controversy.** The matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interests and costs. Specifically, this case involves claims for alleged negligence and damages arising from an automobile accident occurring on or about December 8, 2016. In this action, Plaintiff claims to have suffered a “concussion, traumatic brain injury, PTSD, injuries to his left shoulder and rotator cuff . . . to incur medical care and treatment expenses and will be required to incur further expense for additional care and treatment in the future. . . suffered lost wages in the past, has been unable to return to work and will suffer lost wages in the future” per paragraphs 15-17 of the Petition. Further, Plaintiff seeks damages “including but not limited to, past and future medical expenses and other economic losses, past and future non-economic damages for his pain, suffering and disability in such sums as are fair and reasonable in an amount greater than \$25,000.00, together with the costs herein expended, attorneys’ fees and for such other and further relief as the Court deems just and proper” per the prayer for relief in the Petition. Therefore, it is anticipated Plaintiff’s alleged combined claims for damages exceed the required \$75,000 jurisdictional threshold for the amount in controversy. The Eighth Circuit has held that attorney’s fees and penalties may be considered when determining the jurisdictional amount. *Crawford v. Hoffman-*

*LaRoche, Ltd.*, 267 F. 3d 760, 765 (8<sup>th</sup> Cir. 2001); *see also Kerr v. Ace Cash Experts, Inc.*, No. 4:10-CV-1694, 2010 WL 5177977, at \*1 (E.D. Mo. Dec. 14, 2010) (considering punitive damages and attorney fees in removal analysis).

4. Defendant will file its Answer or otherwise respond to the Petition within seven days after filing this Notice of Removal, pursuant to F.R.C.P. 81(c).

5. Pursuant to 28 U.S.C. § 1446(d), a copy of the Notice of Removal with its attachments will be served promptly on Plaintiff through their counsel of record in the State Court Action, and a true and correct copy of this Notice will be filed with the clerk of the Circuit Court of Jackson County, Missouri. The Notice of Filing Removal to Federal Court (without exhibits) which is being filed with the Circuit Court of Jackson County, Missouri, will be filed with the Clerk of this Court within three business days of filing the notice of removal to Circuit Court of Jackson County, Missouri and that has been acknowledged by the Clerk of the Jackson County Circuit Court.

6. Venue in this Court is proper. Pursuant to 28 U.S.C. § 1446(a), Defendant files this Notice of Removal in the District Court of the United States for the district and division within which the State Court Action is pending. *See also, Polizzi v. Cowles Magazines, Inc.*, 345 U.S. 663, 665-66 (1953) (venue removed in cases is controlled by the removal statute, rather than the general venue statute, which requires removal to “the district and division embracing the place where such action is pending”).

7. By this Notice of Removal, Defendant does not waive any defenses or objections it may have to this action; does not intend any admission of fact, law, or liability; and expressly reserves all defenses, motions, and pleas.

WHEREFORE Defendant Fast Cargo, Inc. hereby removes the Circuit Court of Jackson County, Missouri case entitled *Timothy Allen v. James Porter, et al.*, Case No. 2116-CV20782, to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1331, 1332(d), 1367, and 1453, and other relevant and applicable law, as if this action had been originally filed in this Court, seeks that further proceedings in the State Court Action be stayed in all respects, and that Defendant obtains all additional relief to which it is entitled.

Respectfully submitted,

**FRANKE SCHULTZ & MULLEN, P.C.**

/s/ Christopher A. Brackman

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**Attorneys for Defendant Fast Cargo, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2021 a true and accurate copy of the foregoing was electronically filed with the Clerk of the District Court, via the Courts e-Filing system and served via electronic mail to:

James M. Crabtree- KS #16311

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**Attorney for Plaintiff**

/s/ Christopher A. Brackman

**Attorney for Defendant  
Fast Cargo**